UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LARRY WATKINS, Plaintiff, v. SGT. BUSS, et al., Defendants.	CASE NO. C10-1351-JCC REPORT AND RECOMMENDATION

INTRODUCTION

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (Dkt. 10.) He names Sgt. Buss (sic), Officer Cook, Officer Camba, King County, Probation Officer Debra Codoroa, Sgt. Pierson, Capt. Bautista, Jason Rollolazo (sic), Officer Starks, Officer Stark, and Major John Doe as defendants. Plaintiff alleges defendants denied him a mattress in a disciplinary deadlock cell, caused his "false arrest," improperly froze his inmate account, violated his rights in relation to a disciplinary hearing, and lied about and slandered him in relation to two different incidents at the King County Correctional Facility (KCCF). (*Id.*)

Defendants filed a motion for summary judgment. (Dkt. 34.) Plaintiff did not oppose defendants' motion. The Court deems plaintiff's failure to oppose to be an admission that the motion has merit. *See* Local Civil Rule 7(b)(2). The Court further finds defendants entitled to summary judgment and this matter subject to dismissal.

BACKGROUND

Plaintiff has been booked into KCCF forty-two times since 1988. (Dkt. 36, ¶10.) A 1995 notation in the King County Department of Adult and Juvenile Detention (DAJD) Classification System states: "Inmate Watkins is a behavior management problem and has a history of institutional escapes. He has assaulted other inmates, he has escaped from a state transport van. He has a history of assaults on correctional staff (in juvenile detention). Use caution when transporting." (*Id.*, ¶8.)

Plaintiff's "false arrest" claim, directed against defendant probation officer Debra Codoroa, relates to his April 10, 2007 booking on a probation hold. (*Id.*, ¶11.)[1] He was released at the expiration of that sentence on May 2, 2007. (*Id.*) (*See also* Dkt. 10 at 3 (plaintiff states in his amended complaint that he spent "almost 30 days in jail" following his arrest by Codora).) Plaintiff was subsequently booked and released from KCCF on five different occasions in 2007 and 2008, leading to a final booking on December 29, 2009. (Dkt. 36, ¶¶ 12-17.) Plaintiff brings his remaining claims in association with incidents following his December 2009 booking, while he was a pretrial detainee at KCCF, and against King County

1 Plaintiff's amended complaint was never served on Debra Codoroa. Counsel for the other named defendants attest that they do not represent Codoroa and that she is not employed by King County. In any event, as discussed below, the motion for summary judgment includes adequate grounds for dismissing plaintiff's claims against Codoroa.

and the DAJD employees identified above.[2]

Following a March 28, 2010 inmate disturbance at KCCF, defendant Starks infracted plaintiff for violation of a number of inmate rules, including refusing orders causing a Sergeant's response, tampering with a safety or security device, refusing orders, nuisance activity, rioting, possession of a weapon or escape tool, intentional flooding, verbal and non-verbal abuse directed at staff, threats, group demonstration, property damage of more than $100.00, and tampering with equipment. (Dkt. 40, ¶4 and Ex. A.) That same day, the Seattle Times published an article regarding the disturbance. (Dkt. 36.) The article includes quotes from DAJD Major William Hayes and reflects the property damage resulting from the incident. *See* http://seattletimes.nwsource.com/html/localnews/2011467715_jail29m.html. It states that none of the inmates had "homemade weapons," and does not include the names of any inmates involved in the disturbance. *Id.*

Plaintiff's disciplinary hearing regarding the March 28th incident began on April 1, 2010. (Dkt. 40, ¶5.) DAJD Correction Programs Specialist Jason Wanner conducted the hearing "cell-side[,]" rather than at the typical Classification office location. (*Id.*, ¶11.) Wanner attests that approximately five percent of disciplinary hearings are conducted cell-side "as a reflection of the inmate's assaultive or oppositional in-custody behavior or other security factors and resultant concerns for the safety of both corrections officers and the inmate himself." (*Id.*, ¶¶11-12.) The "very unusual" cell-side location was chosen in plaintiff's case

2 Defendants submit that there were no DAJD employees by the names Jason Rollolazo or Sergeant Buss during the relevant time period. (Dkt. 39, ¶¶9-10.) However, waivers of service of summons were returned by DAJD employees "Jason Rollolazo", "'defendant' as named by plaintiff," and David Bliss, as well as by Major Corinna Hyatt. (Dkts. 10, 18, 26-27.)

based on the perception of the security risk plaintiff presented. (*Id*.)

Wanner gave plaintiff a Disciplinary Check List & Statement form, with a copy of the infraction attached. (*Id*., ¶6 and Exs. A & B.) He pointed out the places on the form where plaintiff and witnesses could provide statements and went over each alleged rule violation in detail. (*Id*., ¶¶7-8.) Plaintiff pled guilty to violating four rules – refusing orders causing a Sergeant's response, tampering with a safety or security device, refusing orders, and nuisance activity – and signed both the check list and statement form and an Inmate Infraction Report/Disciplinary Hearing. (*Id*., ¶¶8-9 and Exs. B & C.) The hearing decision was suspended pending further investigation. (*Id*., ¶10.)

Wanner returned to plaintiff's cell on April 2, 2010. (*Id*., ¶13.) Plaintiff listed five witnesses on the checklist and statement form, but refused to provide a statement, instead writing: "Explain at Hearing… ." (*Id*., ¶13 and Ex. B.)

On April 3, 2010, DAJD updated plaintiff's security level to "Ultra." (Dkt. 36, ¶19.) DAJD also, on April 6, 2010, froze plaintiff's inmate account – which at that time contained $38.94 – during the pending investigation into the inmate disturbance. (Dkt. 38, ¶3.) DAJD froze the account in order to prevent plaintiff from disbursing his funds before it could be determined whether he owed reimbursement. (*Id*.) A DAJD representative attests that the freezing of plaintiff's account was a "very atypical method to recover restitution[]" and that, typically, an amount owed is listed in the "'recoverable' field" on an inmate account spreadsheet and twenty-five percent of any deposits are deducted until a debt is paid in full. (*Id*., ¶6.) An April 19, 2010 deposit of $100.00 to plaintiff's inmate account was frozen on April 26, 2010. (*Id*., ¶4.) DAJD released the $138.94 balance in plaintiff's account for his

use on September 21, 2010. (*Id*., ¶5.)

Plaintiff was found guilty of violating all of the rules addressed on the March 28, 2010 infraction. (Dkt. 40, ¶16 and Ex. C.) Multiple statements obtained from KCCF personnel identified plaintiff as an instigator of the disturbance, as responsible for property damage, including breaking windows, and as having held a piece of metal in his hand during the disturbance. (*Id*., Ex. D.) He was ordered to serve ten days of disciplinary deadlock and lost "good time" on the five cause numbers for which he was being held. (*Id*., ¶18 and Ex. C.) Defendant Sergeant Pierson, on or about April 9, 2010, escorted plaintiff to the KCCF Classification office and provided him with a copy of the disciplinary hearing results and sanctions. (*Id*.) The check list and statement form indicates that witness statements were not attached or obtained because "inmate witnesses were also implicated in the incident and provided a separate account." (*Id*., Ex. B; case altered.)

Plaintiff filed a grievance complaining about his right to be present and to have witnesses at his disciplinary hearing. (Dkt. 33 at 2.) The KCCF grievance procedure requires the submission of a grievance within fourteen calendar days of the incident grieved, by first directing the issue toward the staff member immediately involved in the issue and, if the issue is not then resolved or if the grievance is about a specific staff member, by submitting an Inmate Grievance Form. (Dkt. 36, ¶¶27-28.) The response to the grievance may thereafter be appealed. (*Id*., ¶28.)

The staff response to plaintiff's disciplinary hearing grievance indicated that the disciplinary process was not grievable. (Dkt. 33 at 3.) Plaintiff appealed, asserting a violation of his due process rights and his right "to be present at his hearing; plus [witnesses.]"

(Dkt. 40, Ex. E.) The appeal was denied based on plaintiff's failure to raise any substantive issues, because he had been given an opportunity to make a statement and call witnesses, and because there was sufficient evidence to find him guilty of all charges. (*Id.*)

Plaintiff also filed a grievance complaining about the freeze on his inmate account. (Dkt. 33 at 6-7.) The staff response to the grievance explained that the account was frozen pending a decision regarding restitution, that plaintiff was "able to order indigent commissary if needed[,]" and that his account would be restored if no restitution was ordered. (*Id.* at 7.) Plaintiff appealed and the final decision, written by defendant Bautista, stated that no process was required before freezing inmate funds where there was probable cause an individual had committed a criminal offense, as well as that plaintiff's access to his funds would be restored upon completion of the criminal proceedings. (*Id.*)

Plaintiff again received an infraction on July 4, 2010 for refusing to "rackback," or return to his cell, requiring a sergeant response and causing a show of force before he would comply. (Dkt. 36, ¶20.) He pled guilty and called staff and inmate witnesses at a July 7, 2010 disciplinary hearing. (*Id.*, ¶¶20-21.) One inmate witness was directed out of the area after plaintiff refused orders and caused imminent use of force. (*Id.*, ¶21.) Plaintiff was found guilty of refusing orders, causing a supervisor response, and using verbally abusive language, and was ordered to disciplinary deadlock as a sanction. (*Id.*, ¶¶22, 24.) Corrections Program Supervisor Rollolazo noted that "'defiance of staff authority is an ongoing behavior problem.'" (*Id.*)

KCCF correction officers moved plaintiff to disciplinary deadlock on the date of the July 2010 hearing. During the move, plaintiff refused an order to go to his knees and lie flat on

the floor and entered into an altercation with defendants Cook, Buss (properly identified as "Bliss"), and Camba, resulting in a "code Blue" being called. (*Id*., ¶25.)

Plaintiff contends that the officers involved in his move to disciplinary deadlock told him it was King County custom to deny deadlock inmates mattresses. (Dkt. 10 at 3.) A DAJD representative attests that, when an inmate vacates a cell, inmate workers clean the mattress and leave it outside the cell folded up so that corrections officers know that the mattress has been cleaned and may be used by another inmate. (*Id*., ¶26.)

Correction Officer Kenneth Potts attests that, on July 9, 2010, he spoke with plaintiff for approximately thirty minutes regarding various complaints plaintiff had about his incarceration, but that plaintiff never indicated he did not have a mattress. (Dkt. 37, ¶2.) However, on the following day, a Jail Health Services nurse informed Potts that plaintiff complained about not having a mattress. (*Id*., ¶3.) Potts immediately retrieved a mattress and provided it to plaintiff. (*Id*., ¶9.) Potts attests that plaintiff admitted he purposefully kept quiet about not having a mattress in the hopes of complaining and receiving a monetary settlement, and that plaintiff had what appeared to be a properly made bed, with blanket and sheets, in his cell. (*Id*., ¶¶4-8.) An Officers Report by Potts dated July 10, 2010 corroborates Potts' account of this incident and reflects that plaintiff was infracted for lying on that same date. (*Id*., Ex. A (the report also states that plaintiff had a lengthy conversation with Wanner about his status and infractions and similarly failed to inform Wanner that his cell lacked a mattress).)

Plaintiff did not appeal the July 7, 2010 hearing decision. (Dkt. 36, ¶23.) Nor did he file grievances regarding his mattress, "false arrest," any other issues relating to his April 2010 disciplinary hearing, or lies or slander by KCCF employees. (*Id*., ¶29.)

On October 11, 2010, plaintiff pled guilty to Prison Riot and Malicious Mischief in the First Degree and, on November 4, 2010, King County Superior Court sentenced plaintiff to a prison-based Drug Offender Sentencing Alternative sentence of twenty-five months in custody, followed by twenty-five months of community supervision. (Dkt. 35, ¶3 and Ex. A.) On November 9, 2010, KCCF transferred plaintiff to the Washington Department of Corrections to begin serving his sentence. (Dkt. 36, ¶17.)

DISCUSSION

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. *Celotex*, 477 U.S. at 322-23. The court must draw all reasonable inferences in favor of the non-moving party. *See F.D.I.C. v. O'Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev'd on other grounds*, 512 U.S. 79 (1994).

"The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient[]" to defeat summary judgment. *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Also, the nonmoving party "cannot defeat summary judgment with allegations in the complaint, or with unsupported conjecture or conclusory statements." *Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003).

Plaintiff avers claims pursuant to 42 U.S.C. § 1983. In order to sustain a § 1983 claim,

plaintiff must show (1) that he suffered a violation of rights protected by the Constitution or created by federal statute, and (2) that the violation was proximately caused by a person acting under color of state or federal law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

Plaintiff raises a number of claims in this lawsuit, maintaining violation of his constitutional rights through the denial of a mattress, "false arrest," the freezing of his inmate account, the procedures associated with his April 2010 disciplinary hearing, and lies and slander. (*Id.*) For the reasons described below, the Court finds no issue of material fact and plaintiff's claims subject to dismissal on summary judgment.

A. Municipal or Supervisory Liability

A local government unit or municipality, like King County, can be sued as a "person" under § 1983. *Monell v. Department of Social Servs.*, 436 U.S. 658, 691-94 (1978). However, a municipality cannot be held liable under § 1983 solely because it employs a tortfeasor. *Id.* at 691. A plaintiff seeking to impose liability on a municipality under § 1983 must identify municipal "policy" or "custom" that caused his or her injury. *Board of the County Commissioners v. Brown*, 520 U.S. 397, 403 (1997).

In this case, plaintiff avers the existence of several King County customs causing him injury, including customs of denying deadlock inmates mattresses, freezing inmate accounts, and holding inmate infraction hearings in front of other inmates. Defendants deny that deadlock inmates are deprived mattresses and describe the actions of freezing inmate accounts and holding cell-side disciplinary hearings as atypical. Plaintiff presents not even a scintilla of evidence to support his claims that the alleged customs exist or that they caused him harm of a

constitutional dimension. Instead, his allegations against King County are no more than conclusory and, therefore, insufficient to defeat summary judgment. *Hernandez*, 343 F.3d at 1112. *See also Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 922 (9th Cir. 2001) (conclusory allegations unsupported by factual data are insufficient to defeat a motion for summary judgment) (citing *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)).

Also, a plaintiff in a § 1983 action must allege facts showing how individually named defendants caused or personally participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). A plaintiff may not hold supervisory personnel liable under § 1983 for constitutional deprivations under a theory of supervisory liability. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Rather, a plaintiff must allege that a defendant's own conduct violated the plaintiff's civil rights. Here, as argued by defendants, to the extent plaintiff intends any claims against King County supervisory personnel under a theory of either municipal or respondeat superior liability, such claims necessarily fail and should be dismissed.

B. Statute of Limitations

Federal courts apply the forum state's personal injury statute of limitations to § 1983 claims. *See Wilson v. Garcia*, 471 U.S. 261, 276 (1985). A three year statute of limitations applies in Washington. RCW § 4.16.080; *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002). A § 1983 action accrues and the statute of limitations begins to run when a plaintiff "'knows or has reason to know of the injury which is the basis of his or her action.'" *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991) (quoted sources omitted). State law also governs tolling of the statute of limitations. *Hardin v. Straub*, 490 U.S. 536,

543-44 (1989). Washington law provides for tolling of the statute of limitations for an individual who is imprisoned at the time a cause of actions accrues. RCW § 4.16.190 (stating that, if an individual is "imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.") However, the statute of limitations begins to run upon an individual's release from imprisonment and no subsequent imprisonment tolls its operation. *Bagley*, 923 F.2d at 762 & n.4 (citing *Pederson v. Dep't of Transp.*, 43 Wash. App. 413, 422, 717 P.2d 773 (1986)). *See also Bianchi v. Bellingham Police Dep't*, 909 F.2d 1316, 1318 (9th Cir. 1990) ("[A]ctual, uninterrupted incarceration is the touchstone for determining disability by incarceration.")

Plaintiff alleges that Codoroa falsely arrested him on either April 2, 2007 or April 10, 2007. Plaintiff concedes his release from jail less than thirty days later. (Dkt. 10 at 3.) (*See also* Dkt. 36, ¶11 (plaintiff was booked into custody on April 10, 2007 and released on May 2, 2007).) His statute of limitations, therefore, began to run sometime in early May 2007 and expired three years later, in early May 2010. Plaintiff submitted his proposed complaint in this matter on August 23, 2010 (*see* Dkt. 1), several months after his statute of limitations expired. Accordingly, plaintiff's claims against Codoroa are time-barred and should be dismissed.[3]

C. Exhaustion

As stated by the Prison Litigation Reform Act (PLRA): "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a

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3 As reflected in an earlier Order from this Court (*see* Dkt. 9), plaintiff's claims against Codoroa face other obstacles, including, but not limited to, Codoroa's immunity. *See Demoran v. Witt*, 781 F.2d 155, 157 (9th Cir. 1986) ("[P]robation officers preparing reports for the use of state courts possess an absolute judicial immunity from damage suits under [§] 1983 arising from acts performed within the scope of their official duties.")

prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). *See also Jones v. Bock*, 549 U.S. 199, 211-12 (2007) ("There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court.") The exhaustion rule is applied to both prisoners and pretrial detainees. *See, e.g.*, *Panaro v. City of N. Las Vegas*, 432 F.3d 949, 950, 952-53 (9th Cir. 2005). The PLRA does not define "prison conditions," but the Supreme Court has held that "the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

Exhaustion under the PLRA must be "proper." *Woodford v. Ngo*, 548 U.S. 81, 90-93 (2006). In order to properly exhaust, a prisoner must comply with a prison's grievance procedures. *Jones*, 549 U.S. at 218; *Woodford*, 548 U.S. at 90-91. This includes "compliance with [a prison's] deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." *Woodford*, 548 U.S. at 90-91. *Accord Griffin v. Arpaio*, 557 F.3d 1117, 1119 (9th Cir. 2009) (proper exhaustion "means that a grievant must use all steps the prison holds out, enabling the prison to reach the merits of the issue.")

It is undisputed that plaintiff utilized the available grievance procedure for two of the issues raised in this lawsuit, his right to his presence and witnesses at his April 2010 disciplinary hearing and the freezing of his inmate account. (*See* Dkt. 33.) Defendants attest that plaintiff failed to utilize the grievance process for any of his remaining claims, including those related to his mattress, his arrest, any other complaints about his April 2010 disciplinary

hearing, and his complaints of lies or slander by different DAJD employees. (Dkt. 36, ¶29.) They argue that all of those claims should be dismissed under the PLRA for failure to exhaust.

Plaintiff, prior to the filing of defendants' motion for summary judgment, submitted a document stating that he wrote several grievances about his "issues" that were never answered. (Dkt. 33.) He attached a grievance dated October 14, 2010 complaining that he had filed two grievance reports and had not received any response. (*Id*.) However, neither the grievance itself, nor plaintiff's submission identifies the issues he allegedly grieved. (*Id*.) Moreover, even assuming plaintiff did file a relevant grievance, there is no indication he completed the grievance procedure. In fact, the October 2010 grievance submitted does not contain a staff response, an appeal, or a final response. (*Id*. at 4-5.) Nor did plaintiff submit any response to defendants' motion for summary judgment asserting his exhaustion or attempted exhaustion of his remaining claims.

Given the above, the Court concludes that plaintiff failed to exhaust all but two of his claims. Plaintiff's unexhausted claims, including those related to his mattress, any other complaints about his April 2010 disciplinary hearing, and his complaints of lies or slander by DAJD employees, should, therefore, be dismissed. 42 U.S.C. § 1997e(a); *Jones*, 549 U.S. at 211-12.

D. Merits of Exhausted Claims

Defendants argue that plaintiff's exhausted claims regarding his right to his presence and witnesses at his April 2010 disciplinary hearing and the freezing of his inmate account lack merit. They also assert their entitlement to qualified immunity. For the reasons described below, the Court agrees that plaintiff's exhausted claims lack merit and should be dismissed.

1. Disciplinary Hearing:

Plaintiff alleges violation of his Fifth and Fourteenth Amendment rights to due process through the denial of his presence and witnesses at his April 2010 disciplinary hearing. (Dkt. 10 at 5.) Also, although it was never grieved, plaintiff takes issue with the fact that the hearing took place cell-side, in front of other inmates. (*Id*. at 5-6.)

In *Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974), the Supreme Court outlined the minimum procedures required in the face of disciplinary charges. The Court found that due process requires, *inter alia*, a written statement – addressing the charges, a description of the evidence, and an explanation for the action taken – at least twenty-four hours prior to the disciplinary hearing, that written record be made of the proceedings, and the opportunity to present documentary evidence and call witnesses, unless such an allowance would interfere with institutional security. *Id. See also Mitchell v. Dupnik*, 75 F.3d 517, 523-26 (9th Cir. 1996) (describing applicability of *Wolff* to pretrial detainees).

Prison officials must be afforded the "necessary discretion to keep the hearing within reasonable limits[.]" *Wolff*, 418 U.S. at 566. They must also, however, have a legitimate penological reason for limiting an inmate's efforts to raise a defense. *Koenig v. Vannelli*, 971 F.2d 422, 423 (9th Cir. 1992) (per curiam). The right to call witnesses may legitimately be limited by "the penological need to provide swift discipline in individual cases . . . [or] by the very real dangers in prison life which may result from violence or intimidation directed at either other inmates or staff." *Ponte v. Real*, 471 U.S. 491, 495 (1985). Prison officials must make individualized determinations to limit the calling of witnesses, *Serrano v. Francis*, 345 F.3d 1071, 1079 (9th Cir. 2003), and, eventually, explain the reasoning behind the decision, *Ponte*,

471 U.S. at 497, "whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases[,]" *Wolff*, 418 U.S. at 566.

In this case, plaintiff's assertion that he was denied the right to be present at his hearing is contradicted by evidence submitted by defendants. (Dkt. 40, ¶¶5-17 and Exs. B & C.) In fact, by complaining about the lack of privacy afforded by the cell-side location of the hearing (Dkt. 10 at 5-6), plaintiff concedes his presence. Furthermore, even if plaintiff had properly grieved the location of the hearing, he fails to present any support for the contention that it deprived him of due process or otherwise violated his constitutional rights. Defendants, on the other hand, reasonably point to plaintiff's history as a "behavior management problem" (Dkt. 36, ¶8), and explain the hearing location as resulting from the perception of the security risk plaintiff presented (Dkt. 40, ¶¶11-12).

Defendants further provide legitimate penological reasons for imposing other limitations on plaintiff's presentation of his defense. In addition to the fact that plaintiff had just taken part in an inmate disturbance at the jail and was deemed to present a security risk, defendants note that the witnesses named by plaintiff "were also implicated in the incident and provided a separate account[.]" (*Id*., Ex. B.) Defendants, therefore, reasonably relied upon both the hazards presented and the lack of necessity in declining to call plaintiff's witnesses to give testimony at the hearing. *See Wolff*, 418 U.S. at 566. Accordingly, plaintiff's claims regarding his April 2010 disciplinary hearing should be denied.

2. Freezing Inmate Account:

Plaintiff alleges that defendants Pierson and Bautista violated his due process and equal protection rights and subjected him to cruel and unusual punishment by freezing his inmate

account. (Dkt. 10 at 5.) He asserts that defendants had knowledge other inmates may have destroyed property in the same incident, but chose solely to freeze his account, and kept the account frozen even after the conclusion of the internal investigation. (*Id*.) He also avers he was told that the action was taken pursuant to King County custom and pursuant to court authority. (*Id*.)

a. Equal Protection:

"To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Barren v. Harrington*, 152 F.3d 1193, 1194-95 (9th Cir. 1998) (citations omitted). Here, plaintiff makes no showing either that he belongs to a protected class or that defendants acted with intent to discriminate against him in freezing his account. His assertion of an equal protection violation is no more than conclusory and should be denied. *Hernandez*, 343 F.3d at 1112.

b. Due Process:

The Fourteenth Amendment prevents a state from depriving a person of life, liberty, or property without due process of law. U.S. Const. amend. XIV. Plaintiff here appears to allege a deprivation of his property without due process.

A prisoner has a protected property interest in the funds in his inmate trust account. *Quick v. Jones*, 754 F.2d 1521, 1523 (9th Cir. 1985). Upon determining a property interest exists, the Court determines the process due. *Id*. Application of the due process analysis requires "a recognition that not all situations calling for procedural safeguards call for the same

kind of procedure." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). As a general rule, where a prisoner alleges the deprivation of a liberty or property interest caused by the unauthorized negligent or intentional action of a prison official, the prisoner cannot state a constitutional claim where the state provides an adequate post-deprivation remedy. *See Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Parratt v. Taylor*, 451 U.S. 527, 538 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986). However, where the deprivation results from an established state procedure, rule, or regulation, i.e., where the prison official's conduct is authorized by the state, the existence of an adequate post-deprivation remedy is irrelevant. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433-37 (1982)

Defendants argue there was no deprivation of property in this case, as the balance in plaintiff's account was only temporarily frozen and ultimately returned to plaintiff intact. *Cf. Quick*, 754 F.2d at 1522-23 (entailing actual withdrawal of funds to pay two prison employees whose property an inmate had damaged). Defendants further point to plaintiff's failure to allege that the freezing of his account was in accordance with either DAJD policy or state law; rather, plaintiff emphasized the fact that DAJD froze only his account and not those of the other inmates suspected of causing property damage during the inmate disturbance. They argue that such random and unauthorized conduct could have been addressed through state law, which would serve as an adequate post-deprivation remedy. *See, e.g.*, *Parratt*, 451 U.S. at 538.

Plaintiff, in failing to respond to defendants' motion, fails to contest the allegation that the temporary freeze on his account did not amount to an actual deprivation of property. His amended complaint states only that his inmate account "enable[ed] [him] to buy phone card(s) & ect.[,]" (Dkt. 10 at 5), while the grievance filed in relation to this issue reflects that plaintiff

remained able to order indigent commissary. (Dkt. 33 at 7). There does not appear to be any clear Ninth Circuit law on whether something other than a permanent deprivation of inmate funds could qualify as an interference with a property interest requiring due process protections. *But see Burns v. Pa. Dep't of Corr.*, 544 F.3d 279, 291 (3d Cir. 2008) (finding a deprivation of a protected property interest for purposes of procedural due process where prison officials assessed a prisoner's inmate account for medical and other expenses, without actually deducting funds from the account).

Plaintiff also fails to identify an established procedure, rule, or regulation upon which he alleges defendants acted in freezing his account. As reflected above, while plaintiff avers he was told the County was acting pursuant to its custom (Dkt. 10 at 5), defendants maintain its response was atypical to the customary practice (Dkt. 38, ¶6). Defendants also describe their atypical response as an attempt to prevent plaintiff from disbursing the money in his account prior to a determination of restitution (*Id.*, ¶3), which suggests the need for quick action and the impracticality of a pre-deprivation process. *See, e.g.*, *Parratt*, 451 U.S. at 539 (noting the recognition "that either the necessity of quick action by the State or the impracticality of providing any meaningful predeprivation process, when coupled with the availability of some meaningful means by which to assess the propriety of the State's action at some time after the initial taking, can satisfy the requirements of procedural due process.") *But see Zinermon*, 494 U.S. at 132, 136-38 (finding *Parratt* inapplicable where the deprivation of liberty was predictable, the creation of a pre-deprivation process was not impossible, and the deprivation was the result of an official's "'abuse of his position[,]'" rather than random and unauthorized) (quoted source omitted); *Honey v. Distelrath*, 195 F.3d 531, 534 (9th Cir. 1999) (finding acts at

issue not random and unauthorized where officials had the authority to effect the deprivation and the duty to afford procedural due process); *Haygood v. Younger*, 769 F.2d 1350, 1357 (9th Cir. 1985) (deprivation that is the product of "institutionalized practice" is "neither random nor unauthorized, but wholly predictable, authorized, and within the power of the state to control.")

In any event, even assuming the temporary freeze constituted a deprivation of property requiring pre-deprivation process, plaintiff was provided such process in the April 2010 disciplinary hearing. As described above, plaintiff was sanctioned for, among other things, property damage of more than $100.00. (Dkt. 40, ¶4 and Ex. A.) Plaintiff makes no showing that the April 2010 disciplinary procedures associated with this and the other sanctions were in any way deficient. *See Wolff*, 418 U.S. at 563-69. He, therefore, fails to establish a violation of his due process rights in the temporary freeze placed on his inmate account. *See, e.g.*, *Campbell v. Miller*, 787 F.2d 217, 223-25 (7th Cir. 1986) (where inmate "had precise notice of the charges against him[,] . . was given a hearing before the Institution Discipline Committee, and had a reasonable opportunity to defend himself[,]" he "was afforded procedural due process consonant with the circumstances of his incarceration."); *Ruley v. Nevada Bd. of Prison Comm'rs*, 628 F. Supp. 108, 110-13 (D. Nev. 1986) (due process not offended when prison officials assessed $3,000 as restitution and then froze trust account where there was no allegation inmate "was not provided a meaningful opportunity to refute the case against him.")[4]

Also, that the account remained frozen after the conclusion of the disciplinary

4 As presented by defendants, following the initiation of the disciplinary hearing on April 1, 2010, plaintiff's inmate account was frozen on April 6, 2010 and the hearing concluded the following day, on April 7, 2010. (Dkt. 38, ¶3 and Dkt. 40, ¶¶5, 10.) The Court does not find this one-day difference significant given that plaintiff had been provided sufficient notice and opportunity to present his defense prior to the freezing of his inmate account, as well as given defendants' reasonable concern that plaintiff would disburse his money prior to a determination regarding restitution.

proceeding is explained by the fact that the inmate disturbance and associated property damage were the focus of both internal disciplinary proceedings and state criminal proceedings, the latter of which did not resolve until shortly after the removal of the freeze on plaintiff's account. (*See, e.g.*, Dkt. 33 at 7, Dkt. 35, ¶3, and Dkt. 38, ¶3.) For this reason and for the reasons stated above, plaintiff's due process claim should be denied.

c. Cruel and Unusual Punishment:

The Eighth Amendment prohibits the cruel and unusual punishment of prisoners, while the punishment of pretrial detainees is prohibited by the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). *But cf. Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998) ("Because pretrial detainees' rights under the Fourteenth Amendment are comparable to prisoners' rights under the Eighth Amendment, however, we apply the same standards.") "Under the Due Process Clause, detainees have a right against jail conditions or restrictions that 'amount to punishment.'" *Pierce v. County of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008) (quoting *Bell*, 441 U.S. at 535-37).

The test for identifying unconstitutional punishment at the pretrial stage of a criminal proceeding requires a court to examine "whether there was an express intent to punish, or 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purposes assigned [to it].'" *Demery v. Arpaio*, 378 F.3d 1020, 1028 (9th Cir. 2004) (quoting *Bell*, 441 U.S. at 538). "For a particular governmental action to constitute punishment, (1) that action must cause the detainee to suffer some harm or 'disability,' and (2) the purpose of the governmental action must be to punish the detainee." *Id*. at 1029. Further, "to constitute

punishment, the harm or disability caused by the government's action must either significantly exceed, or be independent of, the inherent discomforts of confinement." *Id*. at 1030.

Defendants attest that DAJD inmates are provided with all basic necessities of life, including, *inter alia*, meals, bedding, towels, hygiene items, clothing, shoes, laundry, and health services. (Dkt. 34, ¶5.) Moreover, as plaintiff was reminded in the response to his grievance, he remained able to order indigent commissary despite the freeze on his account. (Dkt. 33 at 7.) Plaintiff avers only that the temporary freeze interfered with his ability to "buy phone card(s) & ect. . . [,]" (Dkt. 10 at 5), and, therefore, makes no showing of any resultant harm or disability. *Cf. Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982) (institution complies with the Eighth Amendment in providing sentenced prisoners with "'adequate food, clothing, shelter, sanitation, medical care, and personal safety.'") (quoted source omitted).

Nor does plaintiff establish any intent to punish. "[M]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." *Bell*, 441 U.S. at 546. *Accord Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) ("Legitimate, non-punitive government interests include ensuring a detainee's presence at trial, maintaining jail security, and effective management of a detention facility.") Moreover, corrections administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell*, 441 U.S. at 547.

In this case, defendants explain the temporary freeze on plaintiff's account as intended to prevent the disbursement of money prior to a determination of whether plaintiff owed

restitution. (Dkt. 38, ¶3.) Defendants, therefore, assign an alternative and reasonable purpose for the action taken. *Cf. Chilcote v. Mitchell*, 166 F. Supp. 2d 1313, 1315, 1318 (D. Or. 2001) (confinement of pretrial detainees in cramped, triple-bunked cells for 20 to 21 hours a day did not rise to the level of a constitutional violation in the face of the population-based needs and security concerns). For this reason, and for the reason stated above, plaintiff's claim of cruel and unusual punishment should also be denied.

E. State Law Claims

Plaintiff's complaint arguably also contains state law claims of slander raised against defendant Starks and Major John Doe. (Dkt. 10 at 6-7.) Because the Court finds all of plaintiff's federal claims subject to dismissal for the reasons described above, it recommends that the Court decline to exercise supplemental jurisdiction over any state law claims and to dismiss those claims without prejudice for want of jurisdiction. *Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) ("A court may decline to exercise supplemental jurisdiction over related state-law claims once it has 'dismissed all claims over which it has original jurisdiction.'") (quoting 28 U.S.C. § 1367(c)(3)).

CONCLUSION

For the reasons described above, defendants' unopposed motion for summary judgment (Dkt. 34) should be GRANTED and this matter DISMISSED with prejudice as to plaintiff's federal constitutional claims.[5] The Court further recommends that the Court decline to exercise supplemental jurisdiction over any state law claims and that any such claims be

5 Finding dismissal appropriate for the reasons described herein, the Court declines to address other arguments raised in defendants' motion for summary judgment.

DISMISSED without prejudice for want of jurisdiction. A proposed order accompanies this Report and Recommendation.

DATED this 12th day of May, 2011.

Mary Alice Theiler
United States Magistrate Judge